In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-514

JOE VEGA, JR., PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner contends that a "target-potential defendant" cannot be called before a grand jury, given immunity and ordered to give testimony. He also contends that fear for the safety of oneself and family should be a defense to a charge of civil contempt for failure to testify under a grant of immunity.

In June 1975, petitioner was subpoenaed to appear before a federal grand jury in Tampa, Florida, investigating counterfeiting offenses. Petitioner appeared but refused to testify, invoking the privilege against self-incrimination. Thereupon petitioner was granted "use" immunity under 18 U.S.C. 6002. He refused, nevertheless, to answer any questions except to give his name. Petitioner was adjudged in civil contempt and was ordered confined for the grand jury's term or until he agreed to testify.[1] The court of appeals affirmed without opinion.

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[1]Petitioner is presently incarcerated. The grand jury will expire in July 1976.

1. Since "'the public * * * has a right to every man's evidence,'" *Branzburg* v. *Hayes*, 408 U.S. 665, 688, any person may be called before the grand jury to give testimony. A grant of "use" immunity is co-extensive with the privilege against self-incrimination and the person given such immunity cannot refuse to testify on a claim of the privilege. *Kastigar* v. *United States*, 406 U.S. 441.

Petitioner argues that a "putative defendant" should be excepted from the "use" immunity provision. But the purpose of that immunity is to compel persons who have evidence of criminal violations, often involving themselves, to present that evidence to the grand jury.[2] Such an exception would seriously narrow the grand jury's authority and create a category of totally immune persons not contemplated by 18 U.S.C. 6002.[3]

2. Petitioner also argues that fear for one's personal safety should be a valid defense to a civil contempt

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[2]Petitioner's argument that "putative defendants" who testify are not witnesses (Pet. 7) is unsound. A witness by definition is one who testifies.

[3]Petitioner contends that he should have been granted a continuance so that he could prepare for the civil contempt hearing. While petitioner mentioned the denial of the continuance in his court of appeals brief, he did not raise the denial as an issue for review. It is therefore not properly before this Court. *Adickes* v. *Kress & Co.*, 398 U.S. 144, 147, n. 2.

In any event, there was no abuse of discretion in denying the request for a continuance. Petitioner made no showing why a continuance was necessary prior to the civil contempt hearing, where the only issue was whether petitioner refused to testify. As the trial judge noted, prior to his grand jury appearance petitioner knew that he had been given "use" immunity (Tr. 5).

conviction for refusal to testify under a grant of "use" immunity. The Court rejected this precise claim in *Piemonte* v. *United States,* 367 U.S. 556, 559, n. 2, holding that fear for personal safety is not a valid excuse for refusing to testify.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

DECEMBER 1975.